IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE TWELFTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

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WRIT PETITION No.14233 of 2004

Between:

1 Adi Andhra Aided Elementary School, rep. by Correspondent P. Samuel, R/o. 25/338, Danial Puram, Nandyal.
2 Baba Fakruddin Committee Aided Elementary School, rep. by Abdul

Rasheed, S/o. Fakruddin, H.No. 14/21, Maladarpet, Nandyal.
3 Aruna Aided Elementary School, rep. by Correspondent, N.G. Maheswara

Rao, S/o. M. Thimmappa, Aged 52 years, H.No. 24/66, Dalithapeta,

Nandyal.
4 V.J.B.A. U.P. School Rep. by Correspondent, S.Y.D. Prasad,

S/o. Ganavedam, H.No. 26/330, M.S. Nagar, Nandyal.
5 8th Ward Aided Upper Primary School, rep. by its Correspondent,

B.J. Raju, S/o. Ch John, R/o. 28/1052/10F, Velgode Gispon Colony,

R.S.Road, Nandyal.
6 St. Mary Fatima High School Rep. by Correspondent, K. Shanthamoorthy,

S/o. K. Ananta Raj, H.No. 25/394-G, R.S.Road, Nandyal.
7 Aided Upper Primary School, rep. by Correspondent K. Den Dayal,

S/o. R.S.John, R/o. D.No.26/360,M.S.Nagar, Moolasagaram, Nandyal.
8 Arundthati Aided U.P.School rep. by Correspondent, M.Simon, S/o. Daniel,

H.No. 146, Abbipuram, Mahanandi(M.O), Nandyal.
9 Mahaboobia Aided U.P. School rep. by K. Mahaboob Basha, S/o. Abdul

Rajack, H.No. 4/408, M.H. School road, Nandyal.
10 Chinmaya Aided U.P. School rep. by Correspondent, Raja Srinivas,

S/o. Raja Pedda Subbarayudu, H.No. 1/259, Main Road, Nandyal.

11 Adi Andhra Aided U.P. School, rep. by Correspondent, S. Suseelamma,

W/o.S. Ananda Rao, H.No. 24-53, Dalithapeta, Nandyal.
12 Hindu Aided Ele, School, rep. by Correspondent, K. Sukruthamma,

D/o. K. Rathanamma, H.No. 26/483, Peta Committee, Nandyal.

..... PETITIONERS

AND

1 Govt of A.P., rep. by its Secretary, School Education Department,

Secretariat, Hyderabad.
2 The Commissioner and Director of School Education, Saifabad,

Hyderabad.
3 The District Educational Officer, Kurnool, Kurnool District.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ order or direction more particularly one in the nature of mandamus to declare that the respondents have no power to insist upon the constitution of the selection committee with a departmental nominee in the selection process of teaching and non teaching staff in petitioner's schools in view of the latest Supreme Court Judgment and consequently direct the respondents to frame suitable guidelines for the appointment of teaching/non-teaching staff in petitioners schools forthwith by going examining the records relating to the proposals submitted by the petitioners' schools to fill up the vacant aided posts in petitioners' schools.

Counsel for the Petitioners: Ms. G.LAKSHMI

Counsel for the Respondent Nos.1 to 3: GP FOR SCHOOL EDUCATION

The Court made the following:

ORDER:

The petitioners, twelve in number, are aided primary, upper-primary and high schools allegedly established prior to 1970. Petitioners 2, 5, 7, 8, 11 and 12 are minority educational institutions, among whom petitioners 5 and 7 obtained permanent minority certificates. In this Writ Petition, the petitioners seek a Writ of Mandamus declaring that the respondents, namely, (i) Government of Andhra Pradesh in School Education Department; (ii) Commissioner and Director of School Education, Hyderabad; and (iii) District Educational Officer (DEO), Kurnool, have no power to insist upon constitution of selection committee by the departmental nominee in the selection process of teaching and non-teaching staff in petitioner schools in view of the judgment of the Supreme Court and for a consequential direction to respondents to frame suitable guidelines for appointment of teaching/non-teaching staff in petitioner schools forthwith by examining the proposal submitted by petitioner schools to fill up the vacant aided posts.

The establishment, recognition, administration and control of primary, upper-primary and high schools are governed by A.P. Educational Institutions (Establishment, Recognition, Administration and Control of Schools under Private Managements) Rules, 1993 (for short, the Rules) promulgated by the Government of Andhra Pradesh in exercise of their powers under Section 99 of the A.P. Education Act, 1982 (for short, the Act) vide G.O.Ms.No.1, Education (PS-2), dt.1.1.1994. Rules 12 and 13 of the Rules read as under:

12. Appointment of Staff: (1) The educational agency shall appoint staff as per the staffing pattern prescribed by Government from time to time. All staff shall conform to the qualifications prescribed by Government from time to time.

(2) All the staff teaching as well as non-teaching shall be recruited through Staff Selection Committee to be constituted by the educational agency in accordance with these rules.

(2A) (i) Before filling-up of the aided teaching posts, the recruiting agency shall necessarily obtain clearance from the District level Surplus Man Power Cell under the control of the District Collector. If there are suitable candidates in the Surplus Man Power cell of the District they should be absorbed against the said vacancies as per the subject requirements. If there are no suitable candidates available as per the subject requirement, further action to fill the vacancies may be taken by the recruiting agencies and competent authorities as per these rules without any further clearance from the Government in Finance Department subject to fulfilment of all the provisions of the said rule.

All such recruitment clearances will be consolidated on every 1st July and 1st January and be submitted by the Commissioner, School Education to the S.M.P.C. in the Finance Department.

N.B: However the permission from the Surplus Man Power Cell at the District level is not required in case the vacancies in the aided schools are to be filled by promotion of persons working in the feeder categories as per the rules or by recruitment by transfer from other category or service if the rules permit.

(ii) in respect of non-teaching staff, the recruiting agency shall obtain clearance from the

District level Surplus Man Power Cell under the control of the District Collector. If there are suitable and eligible candidates available in the said Cell they should be absorbed against the vacancies. If there are no suitable candidates available in the District Level Cell, the recruiting agency shall send particulars to the District Educational Officer and the District Educational Officer shall address the Government in Finance Department directly and obtain clearance before taking action to fill the vacancies.

(3) All the posts shall be advertised in atleast two News Papers having large circulation of which one shall be in Telugu.

(4) All educational institutions receiving grant-in-aid from Government shall notify vacancies to the Employment Exchange and in addition, advertisements in the News Papers, that they shall also be required to call the candidates sponsored by Employment Exchange for test and interview provided that the persons applying to the post in response to the advertisement in the newspapers should have got registered their names in any Employment Exchanges in the State.

(5) Aided Schools shall also be required to have a nominee of the District Educational Officer not below the rank of Deputy Educational officer in the Staff Selection Committee. The educational agency shall fix the selection process (test/interview) in consultation with the District Educational Officer or his nominee and shall afford the D.E.O's nominee a reasonable opportunity of being present. The selection, however, shall not be vitiated only on the ground of the absence of D.E.O's nominee if the educational agency has offered reasonable explanation. The burden of proving this shall lie with the educational agency.

(6) The selection of the posts in all private educational institutions shall conform to the communal rotation roster. However, this shall not apply to minority educational institution only if they are selecting a candidate belonging to the concerned minority community. Where such a candidate is fitted in a vacancy belonging to S.C./S.T. then the S.C./S.T. vacancy shall be carried forward to the next point.

(7) The procedure in respect of aided schools as indicated in sub-rules (4), (5) and (6) above shall apply whether the selection is for an aided post or un-aided post.

(8) All appointments made either of teaching or non-teaching staff by aided or un-aided institutions shall be subject to the approval of the competent authority. For this purpose the educational agency shall inform the competent authority within one month of the selection. The competent authority shall grant approval unless the selection has been in violation of these rules. If the approval is not granted within two months from the date of receipt of the proposals in respect of unaided posts, the approval shall be deemed to have been granted. In order to obviate confusion, it shall be incumbent on the educational agency to remind the competent authority one month after the initial communication, if no approval is received. The burden of proof of having communicated the selection to the competent authority shall lie with the educational agency.

(9) The educational agency shall make the appointments only on the approval as per sub-rule (8) above. And any appointment made by the Educational agencies in violation of any of the provisions of Rule 12 shall be null and void.

(10) Nothing in this rule shall prevent an educational agency from making a temporary appointment in a casual vacancy of unaided post provided that such appointment is not for a period exceeding 60 days.

13. Staff Selection Committee:- (1) The Staff Selection Committee shall consist of

the following persons as members:

a. President of educational agency or his nominee;

b. Correspondent/Secretary/Manager of the Institution;

c. Head Master/Principal of the Institution;

d. Two subject experts, to be selected by the educational agency from the panel approved by the District Educational Officer. Of these, at least one should be the Head Master of a recognised school;

e. In respect of aided schools, an Officer of the Education Department not below the rank of Deputy Educational officer nominated by the District Educational Officer.

(2) The President of the educational agency can either be the Chairman; or nominate one of the members of the Staff Selection Committee to be the Chairman;

(3) The quorum for the Staff Selection Committee meetings shall be four.

A reading of the above Rules would show that a private aided educational institution has to follow the procedure to fill up the vacant teaching and non-teaching posts after obtaining necessary approval to fill up the posts. Be that as it is, first respondent issued G.O.Ms.No.75, dt.23.9.2002 for recruitment of all vacant posts in aided private educational institutions duly following Rule 12 except sub-rule (6) of Rule 12 of the Rules. Be it noted, as seen, Rule 12(6) provides for rule of reservation and every private aided educational institution has to follow the rule of reservation while filling up the posts duly appointing required number of persons belonging to Scheduled Castes (SCs), Scheduled Tribes (STs) and Backward Classes (BCs). As per the procedure contemplated, whenever a Committee is constituted for selection of persons to fill up the posts, it is competent for the DEO to nominate an official of the Education Department in consultation with the District Collector. The petitioners contend that though under Rule 12(5) it is permissible for the DEO to nominate an official of the Department of Education and in the selection committee much importance is not given. Further, in the guidelines issued in G.O.Ms.No.75, dt.23.9.2002 and the D.O. letter addressed by second respondent to the District Collector, priority is given to departmental nominee, which is not required under the Rules.

It is the further case of the petitioners that the procedure contemplated under the Rules for filling up posts in the private schools is contrary to the decisions of the Supreme Court in **T.M.A.Pai Foundation v State of Karnataka** and **Brahmo Samaj Education Society v. State of West Bengal** that the intervention of the respondents in the selection process would dilute the autonomy of the management which is essential requisite of the right to administer educational institutions.

The petitioners do not specifically challenge Rule 13 of the Rules whereunder an Officer of the Education Department not below the rank of Deputy Educational Officer as nominated by the DEO shall be one of the members of the Staff Selection Committee. As long as the said Rule remains in the Statute book, the

petitioners cannot insist that they will constitute Staff Selection Committee without official nominee. Learned counsel, however, submits that in view of the judgment of the Supreme Court in **T.M.A.Pai Foundation v. State of Karnataka** (supra) the respondents have no power to insist upon the presence of departmental nominee in the Selection Committee. According to the learned counsel for the petitioners it impinges upon the autonomy of the private educational institution which is part of the right of the petitioners under Article 19(1)(g) of the Constitution of India. Reliance is placed on the decision of the Supreme Court in **Brahmo Samaj Education Society v. State of West Bengal** (supra).

The submission of the learned counsel for the petitioners is misconceived. In **Brahmo Samaj Education Society v. State of West Bengal** (supra) the State of West Bengal enacted West Bengal College Teachers (Security of Service) Act, 1975 and West Bengal College Service Commission Act, 1978. The College Service Commission was vested with duty to select persons for appointment to the posts of teachers in private educational institutions and colleges affiliated to University of West Bengal. The same was challenged before the Supreme Court under Article 32 of the Constitution of India as violating Articles 25, 26 and 30(1) of the Constitution as Brahmo Samaj Education Society is a religious minority and religion denomination. The Supreme Court considered the question whether appointment of teachers through selection by the College Service Commission is permissible or not. Answering the question in the affirmative, the Supreme Court held that the autonomy of the colleges cannot be totally restricted by entrusting the function of appointment of Lecturers to a statutory body. The Court, however, observed that the State can impose such conditions as are necessary for the proper maintenance of standards of education to check mal-administration. After referring to paragraphs 71, 72 and 73 of the judgment in **T.M.A.Pai Foundation v. State of Karnataka** (supra) the Supreme Court observed as under:

> But that control cannot extend to the day-to-day administration of the institution. It is categorically stated in T.M.A.Pai (SCC at p.551 para 72) that the State can regulate the method of selection and appointment of teachers after prescribing requisite qualification for the same. Independence for the selection of teachers among the qualified candidates is fundamental to the maintenance of the academic and administrative autonomy of an aided institution. The State can very well provide the basic qualification for teachers. Under the University Grants Commission Act, 1956, the University Grants Commission (UGC) had laid down qualifications to a teaching post in a university by passing Regulations. As per these Regulations UGC conducts National Eligibility Test (NET) for determining teaching eligibility of candidates. UGC has also authorized accredited States to conduct State-Level Eligibility Test (SLET). Only a person who has qualified NET or SLET will be eligible for appointment as a teacher in an aided institution. This is the required basic qualification for a teacher. The petitioners' right to administer includes the right to appoint teachers of their choice among the NET-/SLET- qualified candidates.

By reason of Rules 12 and 13 of the Rules, the autonomy of the petitioners' approval has not been diluted. The Staff Selection Committee is constituted by including the President of the educational agency, Correspondent, Head Master/Principal, two Subject Experts selected by educational agency from the

panel approved by the District Educational Officer. Only in the case of aided schools, the official nominee not below the rank of Deputy Educational Officer is appointed in the Selection Committee. The appointment of teachers by statutory commission is altogether different from appointment of teachers by Staff Selection Committee consisting mostly office bearers of educational agency. Therefore, I do not find any merit in the submission of the learned counsel for the petitioners that the respondents have no power to insist upon the presence of the nominee. The autonomy is very well respected by Rule 13 of the Rules and indeed, the discretion is left to the educational agency to select two subject experts out of the panel prepared by the DEO. The Writ Petition is misconceived. But, it shall be open to petitioners to approach the Regional Joint Director/DEO by submitting appropriate proposals to fill up the existing teaching and non-teaching posts. Such proposals shall be considered by the authorities in accordance with law.

The Writ Petition, with the above observations is dismissed. No costs.

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(V.V.S.RAO, J)

12.8.2004

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To

1. The Secretary, School Education Department, Government of Andhra

Pradesh, Secretariat Buildings, Hyderabad.

2. The Commissioner and Director of School Education, Saifabad, Hyderabad.

3. The District Educational Officer, Kurnool, Kurbool District.

4. Two CCs to the Government Pleader for School Education, High Court

Buildings, Hyderabad (O.U.T)

5. Two CD copies.